

WM 20-536 JP
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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ALYSSA BOPARTITO and JOSEPH BOPARTITO,

Index No.: 617997/2020

Plaintiffs,

-against-

VERIFIED ANSWER

WALMART and WAL-MART STORES, INC.,

Defendants.

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The defendant, WAL-MART STORES EAST, LP i/s/h/a "WALMART and WAL-MART STORES, INC.", by its attorneys, BRODY, O'CONNOR & O'CONNOR, ESQS., answering the Verified Complaint herein states upon information and belief:

AS TO THE FIRST CAUSE OF ACTION

FIRST: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked "1", and "2", and each and every part thereof.

SECOND: Defendant denies the allegations set forth in paragraph marked "3", and respectfully refers all questions of law to the trial Court.

THIRD: Defendant denies the allegations set forth in paragraphs marked "4", and "5", and each and every part thereof.

FOURTH: Defendant denies the allegations set forth in paragraphs marked "6", "7", "8", "9", "10", "11", "12", and "13", except admits that WAL-MART STORES EAST, LP is a foreign limited partnership registered to do and doing business in the State of New York, leaving all questions of fact to the trier of fact and all questions of law to the Court.

FIFTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked “14”, “15”, “16”, “17”, “18”, “19”, “20”, “21”, “22”, “23”, “24”, “25”, “26”, “27”, “28”, “29”, “30”, “31”, “32”, “33”, “34”, “35”, “36”, and “37”, and each and every part thereof.

SIXTH: Defendant denies the allegations set forth in paragraphs marked “38”, and “39”, and each and every part thereof.

SEVENTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked “40”, and each and every part thereof.

EIGHTH: Defendant denies the allegations set forth in paragraph marked “41”, and respectfully refers all questions of law to the trial Court.

NINTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked “42”, and each and every part thereof.

AS TO THE SECOND CAUSE OF ACTION

TENTH: Defendant repeats and reiterates each and every denial in answer to paragraphs numbered “1” through “42”, of the Complaint as if more particularly hereinafter set forth in answer to paragraph numbered “43”, and each and every part thereof.

ELEVENTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked “44”, “45”, and “46”, and each and every part thereof.

TWELFTH: Defendant denies the allegations set forth in paragraphs marked “47”, and “48”, and each and every part thereof.

THIRTEENTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked “49”, and each and every part thereof.

AS TO THE SECOND CAUSE OF ACTION

FOURTEENTH: Defendant repeats and reiterates each and every denial in answer to paragraphs numbered "1" through "49", of the Complaint as if more particularly hereinafter set forth in answer to paragraph numbered "50", and each and every part thereof.

FIFTEENTH: Defendant denies the allegations set forth in paragraphs marked "51", and "52", and each and every part thereof.

SIXTEENTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraph marked "53", and each and every part thereof.

AS TO THE SECOND CAUSE OF ACTION

SEVENTEENTH: Defendant repeats and reiterates each and every denial in answer to paragraphs numbered "1" through "53", of the Complaint as if more particularly hereinafter set forth in answer to paragraph numbered "54", and each and every part thereof.

EIGHTEENTH: Defendant denies having knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs marked "55", "56", and "57", and each and every part thereof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

NINETEENTH: The plaintiff was guilty of culpable conduct, including contributory negligence and/or assumption of risk, and should an award be made to plaintiff, same should be diminished in the proportion which the culpable conduct and/or contributory negligence and/or assumption of risk attributable to the plaintiff bears to the culpable conduct and/or negligence which caused the damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

TWENTIETH: In the event that plaintiff recovers judgment against this answering defendant and it is determined that plaintiff's damages were caused in whole or in part by two or more joint tortfeasors, then defendant's liability herein for non-economic loss may not exceed its equitable share of said damages in accordance with its relative culpability, as provided by Section 1601 of the CPLR.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

TWENTY-FIRST: Plaintiff's recovery, if any, shall be reduced by the amount of any collateral payments received, in accordance with CPLR Section 4545.

WHEREFORE, defendant, WAL-MART STORES EAST, LP i/s/h/a "WALMART and WAL-MART STORES, INC.", requests judgment dismissing the Complaint herein, together with costs and disbursements of this action.

Dated: Northport, New York
February 12, 2021

Yours, etc.

BRODY, O'CONNOR & O'CONNOR, ESQS.
Attorneys for Defendant

By:

PATRICIA A. O'CONNOR
7 Bayview Avenue
Northport, New York 11768
(631) 261-7778
File No.: WM 20-536 JP

TO: GRUENBERG KELLY DELLA
Attorneys for Plaintiff
700 Koehler Avenue
Ronkonkoma, New York 11779
(631) 737-4110
File No.: 200235

AFFIRMATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the Courts of the State of New York, shows:

That affirmant is the attorney for the defendant in the within action; that affirmant has read the foregoing Verified Answer and knows the contents thereof; that the same is true to the affirmant's knowledge, except as to the matters therein stated to be alleged on information and belief; and that as to those matters, affirmant believes it to be true.

Affirmant further says that the reason this Verification is made by deponent and not by the defendant is that defendant is a foreign limited partnership.

The grounds of belief as to all matters not stated upon deponent's knowledge are documents, correspondence and records maintained in your deponent's files and conversations and conferences had with the defendant.

The undersigned affirms that the foregoing statements are true under the penalties of perjury.

Dated: Northport, New York
February 12, 2021

PATRICIA A. O'CONNOR